

AMENDED IN ASSEMBLY JUNE 14, 2005

AMENDED IN SENATE APRIL 13, 2005

SENATE BILL

No. 45

Introduced by Senator Alarcon

January 5, 2005

An act to add Chapter 28.5 (commencing with Section 22928) to Division 8 of the Business and Professions Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 45, as amended, Alarcon. Intermodal marine terminals.

Existing law imposes special regulations on various business activities but does not specifically regulate detention and per diem charges imposed by intermodal terminals on intermodal equipment used by motor carriers.

This bill would prohibit an intermodal marine equipment provider or marine terminal operator from imposing per diem~~or~~, detention, *or demurrage* charges, as defined, on an intermodal motor carrier relative to transactions involving cargo shipped by intermodal transport under certain circumstances. The bill would also prohibit an intermodal marine equipment provider from terminating, suspending, or restricting equipment interchange rights of a motor carrier for specified reasons and from charging back, deducting, or offsetting per diem, *detention, or demurrage* charges *or certain other charges* from the motor carrier's freight bill.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 28.5 (commencing with Section 22928) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 28.5. INTERMODAL MARINE TERMINALS

22928. (a) The Legislature finds and declares that unilateral termination, suspension, or restriction of equipment interchange rights of an intermodal motor carrier shall not result from intermodal marine terminal actions as specified in subdivision (b).

(b) An intermodal marine equipment provider or intermodal marine terminal operator shall not impose per diem ~~or~~, detention, *or demurrage* charges on an intermodal motor carrier relative to transactions involving cargo shipped by intermodal transport under any of the following circumstances:

(1) When the intermodal marine or terminal truck gate is closed *during posted normal working hours*.

(2) When the intermodal marine terminal decides to divert equipment without ~~seven days~~² *48 hours*' notification *in writing* to the motor carrier.

(3) When the intermodal marine terminal is assessed a fine pursuant to Section 40720 of the Health and Safety Code.

(4) When the intermodal marine terminal equipment is out of compliance pursuant to Section 34505.9 of the Vehicle Code or the equipment is designated as being out of service.

(5) When a loaded container is not available for pickup when the motor carrier arrives at the intermodal marine terminal.

(6) When the intermodal marine terminal is too congested to accept the container and turns away the motor carrier.

(c) An intermodal marine equipment provider shall not take any of the following actions:

(1) Charge back, deduct, or offset per diem charges, *maintenance and repair charges, or peak hour pricing* from a motor carrier's freight bill.

(2) Unilaterally terminate, suspend, or restrict the equipment interchange rights of a motor carrier *or driver* that uses the dispute resolution process contained in the ~~uniform intermodal~~

~~interchange agreement~~ *Uniform Intermodal Interchange and Facilities Access Agreement* to contest a charge, fee, or fine, including a charge for maintenance and repairs imposed by the intermodal marine terminal, *while the dispute resolution process is ongoing.*

(3) Unilaterally terminate, suspend, or restrict the equipment interchange rights of a motor carrier for late payment of an *undisputed* invoice from the intermodal marine terminal, *provided that the payment is no more than 60 days late.*

(4) *Unilaterally terminate, suspend, or restrict the equipment interchange rights of a motor carrier or driver for parking tickets issued by the marine terminal.*

(d) As used in this chapter:

(1) ~~“Per diem” or “detention”~~ *“Per diem,” “detention,” or “demurrage”* means a charge imposed by an equipment provider for late returns of an empty or a loaded intermodal container and chassis.

(2) ~~“Closed” means not open or available to receive equipment, or a change of location, without a seven-day advance notice by the equipment provider’s facility to the motor carrier.~~ *The marine terminal shall have posted working hours, and “closed” shall mean that the terminal is not open to release or accept equipment during those posted working hours. No charges shall be assessed on a day that the posted working hours indicate that the marine terminal is closed.*

(3) *“Divert” means a change of location from the location where the motor carrier has been directed to return the equipment to a different location from that of pickup. Divert notification by the equipment provider shall be in writing and the motor carrier shall be given not less than 48 hours’ notice for the chassis or container.*

(4) *“Shall not impose per diem, detention, or demurrage charges on an intermodal carrier” shall apply to the day or days in question that an occurrence referenced in subdivision (b) took place.*

(5) *“Intermodal marine terminal” means a marine terminal location or facility that engages in discharging or receiving*

- 1 equipment owned, operated, or controlled by an equipment
- 2 provider.

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